UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

UNITED STATES, : CASE NO. 1:07-cr-0017

:

Plaintiff,

:

vs. : OPINION & ORDER

[Resolving Doc. 69].

ANTHONY E. GREER, JR.

.

Defendant.

:

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

In this opinion and order, the Court considers the Defendant Greer's motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2). The Defendant Greer moves this Court reduce his sentence pursuant to a retroactive reduction in the guideline range for sentences for possession of crack cocaine. [Doc. 69]. The prosecution opposes the motion. [Doc. 70]. For the reasons set forth below, the Court **DENIES** the motion.

On February 21, 2007 a jury found the Defendant Greer guilty of possession with the intent to distribute crack cocaine, in violation of 21 U.S.C. §841(a)(1) and §842(b)(1)(B)(iii). The jury found that he had possessed at least 50 grams of crack cocaine. [Doc. 38]. On May 16, 2007 the Court calculated Defendant Greer's advisory guideline range as between 135 and 168 months. The Court, however, varied Defendant Greer's sentence and sentenced him to 120 months imprisonment, the mandatory minimum sentence. [Doc. 61].

On November 1, 2007, a new set of sentencing guidelines governing sentences for crimes for

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possession of crack cocaine became effective. On December 11, 2007, the United States Sentencing

Commission gave those reduced guidelines retroactive effect.

These retroactive guidelines would place Defendant Greer in a sentencing range of between

108 and 135 months. However, Defendant Greer was convicted of possession with the intent to

distribute at least 50 grams of crack cocaine. Pursuant to 21 U.S.C. §841(b), the Court cannot

sentence Defendant Greer to less than ten years (120 months) imprisonment. The Court, therefore,

has no discretion to reduce Defendant Greer's sentence even though his new guideline range includes

terms below that mandatory minimum sentence. The Court, therefore, must deny the motion.

For the reasons stated above, the Court **DENIES** the motion.

IT IS SO ORDERED.

Dated: April 22, 2008

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

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